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18

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 **SAN FRANCISCO DIVISION**

22 RICHARD KADREY, *et al.*,
23 Individual and Representative Plaintiffs,
24 v.
25 META PLATFORMS, INC., a Delaware
corporation;
26 Defendant.

27 Case No. 3:23-cv-03417-VC-TSH

28 **JOINT ADMINISTRATIVE MOTION TO FILE
UNDER SEAL JOINT DISCOVERY LETTER
AND EXHIBITS**

1 Pursuant to Civil Local Rule 79-5(c) and 79-5(d), Plaintiffs Richard Kadrey, Sarah
 2 Silverman, Christopher Golden, Michael Chabon, Ta-Nehisi Coates, Junot Diaz, Christopher
 3 Golden, Richard Greer, David Henry Hwang, Matthew Klam, Laura Lippman, Rachel Louise
 4 Snyder, Ayelet Waldman, and Jacqueline Woodson (collectively, “Plaintiffs”) and Defendant Meta
 5 Platforms, Inc. (“Meta”) (collectively, the “Parties”) respectfully request leave to file under seal the
 6 portions of the below referenced documents under seal. The Parties have met and conferred
 7 regarding the portions of the documents they request to be filed under seal.

8 Specifically, the Parties seek to seal unredacted portions of the Joint Discovery Letter Brief
 9 (“Joint Letter”) filed pursuant to the Court’s Order Granting Joint Administrative Motion to File
 10 Combined Joint Statement Re: Discovery Dispute (ECF 103), unredacted portions of the
 11 Declaration of Kathleen Hartnett (“Hartnett Declaration”), unredacted portions of the Declaration
 12 of Holden Benon (“Benon Declaration”), and Exhibits 6 and 7 to the Hartnett Declaration. As
 13 discussed below, the portions of these documents that Meta seeks to seal either (1) directly quote
 14 from communications over which Meta has asserted attorney-client privilege, and which are the
 15 basis of the dispute underlying the Joint Letter or (2) refer to or reflect a publicly available LinkedIn
 16 post that discusses and includes screenshots of those communications (“LinkedIn Post”).
 17 Specifically, the quotes and screenshots are of messages that a former part-time Meta employee
 18 and AI researcher, Mr. Tim Dettmers, posted on the “Discord” platform and which conveyed the
 19 content of legal advice that Mr. Dettmers had received from Meta in-house attorneys (“Subject
 20 Communications”). A [Proposed] Order is filed concurrently herewith, and the Parties refer the
 21 Court to the Joint Letter itself and the supporting evidence attached thereto as further support for
 22 this administrative motion.

23 Document	24 Sealing Request
25 Joint Discovery Letter Brief	26 • Redacted portions
27 Hartnett Declaration	28 • Redacted portions
Benon Declaration	• Redacted portions
Exhibit 6 to Hartnett Declaration	• Entire document

1 Exhibit 7 to Hartnett Declaration

2 • Entire document

3 **I. LEGAL ARGUMENT**

4 Though the presumption of public access to judicial proceedings and records is strong, it
 5 “is not absolute.” *Nixon v. Warner Commc’ns. Inc.*, 435 U.S. 589, 598 (19787). The Ninth Circuit
 6 treats documents “attached to dispositive motions differently from records [i.e., documents]
 7 attached to non-dispositive motions.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180
 8 (9th Cir. 2006); *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1098 (9th Cir. 2016). For
 9 non-dispositive motions, such as the Parties’ Joint Letter, the “good cause” standard applies.
 10 *OpenTV v. Apple*, No. 14-cv-01622-HSG, 2015 WL 5714851, at *2 (N.D. Cal. Sept. 17, 2015);
 11 *Kamakana*, 447 F.3d at 1180 (“A ‘good cause’ showing will suffice to seal documents produced in
 12 discovery.”). The Federal Rules afford district courts “flexibility in balancing and protecting the
 13 interests of private parties.” *Kamakana*, 447 F.3d at 1180; *DSS Tech. Mgmt. v. Apple*, No. 14-cv-
 14 05330-HSG, 2020 WL 210318, at *8 (N.D. Cal. Jan. 14, 2020), *aff’d*, 845 F. App’x 963
 15 (Fed. Cir. 2021) (finding good cause to seal “confidential business and proprietary information”).

16 The portion of the Joint Letter that quotes from the Subject Communications should be
 17 sealed because it conveys highly sensitive information, namely information that Meta has asserted
 18 is protected by attorney-client privilege. The Joint Letter contains a direct quote from
 19 communications over which Meta has claimed privilege. Indeed, the dispute underlying the Joint
 20 Letter and supporting evidence submitted by the Parties specifically concerns Meta’s assertion that
 21 the Subject Communications reflect legal advice that Mr. Dettmers and his research team received
 22 from Meta’s in-house attorneys. (See, e.g., Joint Letter; Declaration of Luke Zettlemoyer (attached
 23 to Joint Letter), ¶ 4.) Meta has argued that the Subject Communications are privileged and that the
 24 privilege over them has not been waived. Plaintiffs disagree. Further disclosure of quotes from
 25 the Subject Communications would thus be harmful to Meta, at least until resolution of the dispute.

26 Moreover, in the dispute underlying the Joint Letter, Meta seeks entry of a protective order
 27 preventing Plaintiffs from using the Subject Communications. If Meta prevails, disclosure of the

1 Subject Communications would be prohibited. Sealing of the Subject Communications now is
 2 therefore appropriate.

3 The portions of the Hartnett Declaration, Benon Declaration, and the remaining portions of
 4 the Joint Letter that the Parties seek to seal, as well as Exhibits 6 to the Hartnett Declaration refer
 5 to or consist of the LinkedIn Post. Exhibit 7 is the LinkedIn profile of the individual that created
 6 and published the LinkedIn Post. Although these documents do not contain the screenshots of or
 7 quote from the Subject Communications, because the LinkedIn Post is publicly accessible, the
 8 Parties seek to seal references to the identity of the poster, direct quotes from the LinkedIn Post,
 9 and the LinkedIn Post itself to avoid further proliferation of the Subject Communications.

10 The Parties have taken care to narrowly tailor this request. They have limited their request
 11 only to a quote from the Subject Communications themselves, references to the name of the
 12 individual that created the LinkedIn Post, that individual's LinkedIn profile, quotes from the
 13 LinkedIn Post, and the LinkedIn Post itself. Other relevant information important to this case and
 14 the Parties' dispute will still be accessible in the public record. Accordingly, the Parties' sealing
 15 request is the least restrictive method of protecting Meta's privileged information, while this dispute
 16 is pending.

17 **II. CONCLUSION**

18 Pursuant to Civil Local Rule 79-5, redacted and unredacted versions of the above-listed
 19 documents accompany this Administrative Motion. For the foregoing reasons, the Parties request
 20 leave to file under seal the

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1 Dated: June 28, 2024

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3 By: /s/ Colette Ghazarian

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1 Dated: June 28, 2024

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JACQUELINE WOODSON

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(h)

I hereby attest that I obtained concurrence in the filing of this document from each of the other signatories. I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 28, 2024

COOLEY LLP

/s/ Colette Ghazarian

Attorneys for Defendant
Meta Platforms, Inc.